

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0139

Use Tax

Calendar Years 1996, 1997, and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Use Tax – Utilities

Authority: IC 6-2.5-5-5.1

Taxpayer protests the denial of a portion of its electrical exemption.

II. Use Tax – Diesel Fuel

Authority: IC 6-2.5-3-2

Taxpayer protests use tax on diesel fuel.

III. Use Tax – Batteries, repair and replacement parts

Authority: IC 6-2.5-3-2

Taxpayer protests use tax for batteries and replacement parts for a forklift.

IV. Use Tax – GRP & LVR Purchases

Authority: IC 6-2.5-3-2

V. Use Tax – Gun and ammunition

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2

VI. Use Tax -Sales Tax paid at point of purchase

Authority: IC 6-2.5-2-1

Taxpayer protests the inclusion of purchases upon which sales tax was paid at point of purchase.

STATEMENT OF FACTS

Taxpayer failed to show for a hearing scheduled for Wednesday, August 8, 2001. The determination is made based upon information contained in the audit file and taxpayer's protest letter dated January 20, 2000. The audit file was previously sent to the auditor in order to resolve the issues contained in taxpayer's letter. Taxpayer failed to respond to auditor's numerous attempts at resolution.

Taxpayer is a small manufacturer and rebuilder of custom pallets and produces small runs on a job shop basis. Sales are wholesale to other manufacturers. The taxpayer remitted a minimal amount of use tax in 1996 and 1997 and no use tax in 1998.

I. Use Tax – Electrical Exemption

DISCUSSION

Taxpayer has not provided a "Utility Sales Tax Exemption Application" (Form ST-200) nor proof that its electricity is exempt. The auditor had previously made numerous attempts to obtain the necessary information. No documentation has been provided.

FINDING

Taxpayer's protest is denied.

II. Use Tax – Diesel Fuel

DISCUSSION

Taxpayer's letter states that it uses a forklift to transport the product between two buildings during the manufacturing process and requests eighty percent (80%) exemption for diesel fuel used in the fork lift truck.

The auditor had previously requested additional information, which has not been supplied to date. In a letter dated April 23, 2001, the auditor explained its reasons for disallowing the exemption that was also discussed with the taxpayer personally.

FINDING

Taxpayer's protest is denied.

III. Use Tax - Batteries and repairs to fork lift truck

DISCUSSION

Taxpayer's letter states the auditor assessed use tax for batteries and repairs on equipment to move work in process between machines. The auditor has agreed to remove fifty percent (50%) of the assessment for items and repairs for equipment to move work in process.

FINDING

Taxpayer's protest is sustained for fifty percent (50%) of the assessment for batteries and repair part for the fork lift truck.

IV. Use Tax - GRP & LVR purchases

DISCUSSION

Taxpayer protests the assessment of use tax on personal purchases where sales tax was paid at point of purchase. The taxpayer has provided copies of invoices that indicate sales tax was paid.

FINDING

Taxpayer's protest is sustained.

V. Use Tax - Gun and Ammunition

DISCUSSION

Taxpayer protests the tax on a firearm and states it was a casual transaction between individuals. Taxpayer further states the seller was not in the business of selling firearms and no sales tax should be due on this casual transaction.

The auditor found that two different documents offering this firearm and ammo indicate that the seller is a manager for law enforcement product sales. The sale does not seem to be casual and the seller was in the business of selling Remington products that include firearms and ammunition. No evidence indicates payment of sales tax on the original purchase of these items. Taxpayer has not provided proof to allow negation of the assessment.

FINDING

Taxpayer's protest is denied.

VI. Use Tax - Sales Tax paid at point of purchase.

DISCUSSION

Taxpayer paid sales tax on a portion of its purchases of lumber used in the production of pallets. Credit is due for sales tax already paid. Taxpayer has provided copies of sales receipts.

FINDING

Taxpayer's protest is sustained for purchases of lumber that have been documented with sales tax paid at point of purchase.

CONCLUSION

Taxpayer's protest is denied for issues I, II, and V, sustained for issues IV and VI, and partially sustained for issue III.